

**United States Department of Labor
Employees' Compensation Appeals Board**

J.J., Appellant

and

**DEPARTMENT OF THE INTERIOR, U.S. FISH
& WILD LIFE SERVICE, Jackson, WY,
Employer**

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**Docket No. 18-1692
Issued: July 16, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 7, 2018 appellant filed a timely appeal from April 24 and August 20, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective February 23, 2018; and (2) whether appellant has met his burden of proof to establish total disability from work for the period February 4 to March 3, 2018, causally related to his accepted February 9, 2017 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 10, 2017 appellant, then a 58-year-old facilities maintenance volunteer,² filed a traumatic injury claim (Form CA-1) alleging that, on February 9, 2017, he injured his left knee when he jumped from a ladder and his left leg “torqued” when it got trapped in the snow while in the performance of duty. He stopped work on the date of injury and filed various wage-loss compensation claims (Forms CA-7) for continuing disability.³

OWCP accepted appellant’s claim for left knee anterior cruciate ligament (ACL) sprain, left knee medial collateral ligament sprain, and left knee tear of the medial meniscus. It paid wage-loss compensation on the supplemental rolls effective February 9, 2017.

On March 29, 2017 appellant underwent authorized left knee surgery. He continued to submit medical and physical therapy reports.

In a January 4, 2018 examination report, Dr. Andrew B. Bullington, Board-certified in orthopedic surgery and sports medicine, indicated that appellant was nine months status-post left knee surgery and doing well. On physical examination of appellant’s left knee, Dr. Bullington observed no pain with McMurray’s test and stable valgus varus stress test. Strength examination was 5/5. He diagnosed left knee status-post ACL reconstruction, partial medial meniscectomy, and partial lateral meniscectomy. Dr. Bullington reported that he discussed with appellant about returning back to activities as tolerated.

OWCP paid appellant wage-loss compensation benefits on the supplemental rolls through February 3, 2018.

In a February 6, 2018 note, Dr. Bullington indicated that appellant “can return to work full duty as tolerated with no restrictions.”

On February 6, 2018 appellant informed OWCP that he had accepted a seasonal position as a law enforcement officer. He related that the job would start in April 2018.

In a February 9, 2018 note, Dr. Bullington reported diagnoses of status post ACL reconstruction, partial medial meniscectomy, and partial lateral meniscectomy of the left knee. He referred appellant for strength training with a personal trainer for his lower body.

By decision dated February 22, 2018, OWCP terminated appellant’s wage-loss compensation, effective February 23, 2018. It found that Dr. Bullington’s January 4 and February 6, 2018 reports were entitled to the weight of the medical opinion evidence and established that he had no ongoing disability due to his February 9, 2017 employment injury. It informed appellant that his claim remained open for medical benefits.

² Appellant was employed as a seasonal park ranger for the U.S. National Park Service during the summer months (April through October) and volunteered at the employing establishment during the winter months.

³ On the reverse side of the claim forms, the employing establishment indicated that appellant was requesting wage-loss compensation for time lost from work with the U.S. National Park Service.

On February 18 and March 4, 2018 appellant filed claims for wage-loss compensation (Forms CA-7) for total disability for the period February 4 to March 3, 2018 as a result of his accepted injury.

In a March 13, 2018 claim development letter, OWCP requested additional evidence to establish appellant's wage-loss claim. It informed him that medical evidence was needed to establish that he was unable to work during the claimed period February 4 to March 3, 2018 due to his accepted February 9, 2017 employment injury. OWCP afforded appellant 30 days to submit the requested information.

On March 19, 2018 appellant requested a review of the written record of the February 22, 2018 termination decision. He initially noted that OWCP had only paid him wage-loss compensation through February 3, 2018. Appellant alleged, however, that OWCP was obligated to continue his wage-loss compensation, at a minimum through the self-imposed termination date of February 23, 2018 as set forth in its February 22, 2018 letter. He also related that he had not realized that providing OWCP with Dr. Bullington's February 6, 2018 work status note would result in the termination of his wage-loss compensation.

By decision dated April 24, 2018, OWCP denied appellant's claim for compensation for the period February 4 to March 3, 2018. It found that the medical evidence submitted was insufficient to establish disability for the claimed period. OWCP noted that in a February 6, 2018 work status note, Dr. Bullington released appellant to work full duty. It further noted that when Dr. Bullington referred appellant for strength training on February 9, 2018, he did not specifically remove appellant from work.

By decision dated August 20, 2018, an OWCP hearing representative affirmed the February 22, 2018 termination decision finding that OWCP had met its burden of proof to terminate appellant's wage-loss compensation benefits. She found that the medical evidence of record established that appellant had no ongoing disability due to his accepted February 9, 2017 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, effective February 23, 2018, as the medical evidence of record establishes that he had no ongoing disability due to his accepted February 9, 2017 employment injury.

As noted, OWCP terminated appellant's wage-loss compensation by decision dated February 22, 2018.⁷ OWCP based its decision to terminate wage-loss compensation benefits on the medical reports of Dr. Bullington, appellant's treating physician. In a January 4, 2018 report, Dr. Bullington related that appellant was nine months status post left knee surgery. He provided examination findings and diagnosed left knee status post ACL reconstruction, partial medial meniscectomy, and partial lateral meniscectomy. In a February 6, 2018 note, Dr. Bullington indicated that appellant was able to work full duty with no restrictions as tolerated. The Board finds Dr. Bullington's opinion to be probative evidence that is sufficiently reliable to justify OWCP's termination of appellant's wage-loss compensation benefits for his accepted February 9, 2017 employment injury. As noted, he found that appellant was capable of resuming his full duties on or after February 6, 2018. Accordingly, the Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, as he had no ongoing disability due to his accepted February 9, 2017 employment injury.

The Board notes that OWCP terminated appellant's wage-loss compensation benefits, effective February 23, 2018. As the medical evidence of record establishes that appellant no longer had residuals or disability due to the accepted injury as of February 6, 2018, the effective date of the termination shall be modified to that date.

Appellant asserts on appeal that OWCP was obligated to pay compensation for wage loss until its effective termination date of February 23, 2018, not February 3, 2018. As noted above, however, OWCP may terminate compensation when it establishes that the disability had ceased or that it was no longer related to the employment.⁸

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA⁹ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.¹⁰ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹¹ Whether a particular injury causes an employee to become disabled from work, and the duration of that

⁷ If compensation "has been paid on the daily roll for less than one year" a pre-termination notification is not required. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances, Whether Pre-Termination Notices are Required*, Chapter 2.1400(4)(a) (February 2013). OWCP paid appellant wage-loss compensation on the daily rolls for the period February 9, 2017 through February 3, 2018, which was less than one year. Therefore, pre-termination notification was not required.

⁸ *Supra* note 5.

⁹ *Supra* note 1.

¹⁰ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

¹¹ *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.¹²

Under FECA, the term disability means an incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹³ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁴ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant has met his burden of proof to establish total disability from work for the period February 4 through 5, 2018. However, the Board further finds that appellant has not met his burden of proof to establish continuing disability on or after February 6, 2018 causally related to his accepted February 9, 2017 employment injury.

OWCP paid appellant wage-loss compensation through February 3, 2018. On February 18 and March 4, 2018 appellant filed claims for wage-loss compensation (Forms CA-7) for total disability for the period February 4 to March 3, 2018 as a result of his accepted injury. As noted, Dr. Bullington advised on February 6, 2018 that appellant “[can] return to work full duty ... with no restrictions.” Therefore, the Board finds that appellant remained totally disabled from work for the period February 4 through 5, 2018. As such, the case will be remanded to OWCP for payment of wage-loss compensation for the period February 4 through 5, 2018.

The Board further finds that appellant has not established continuing disability on or after February 6, 2018, the effective date of the termination. There is no medical evidence of record establishing continuing disability on or after February 6, 2018. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁶ It is appellant’s burden of proof to establish continuing disability from work during the claimed period due to his February 9, 2017 employment injury.¹⁷ The record does not contain rationalized medical opinion evidence, based on a complete factual and medical background, supporting causal relationship

¹² See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

¹³ 20 C.F.R. § 10.5(f); see e.g., *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁴ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁵ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁶ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁷ *Supra* note 15.

between the accepted injury and any continuing disability on or after February 6, 2018.¹⁸ The Board, therefore, finds that appellant has not met his burden of proof.

With regard to continuing disability, appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, effective February 6, 2018. The Board further finds that while appellant is entitled to additional compensation for the period February 4 through 5, 2018, he has not met his burden of proof to establish total disability from work on or after February 6, 2018, causally related to his accepted February 9, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2018 termination decision is affirmed as modified to reflect an effective date of February 6, 2018. The April 24, 2018 decision regarding appellant's claim for compensation is affirmed in part and set aside in part. The case is remanded for further action consistent with this decision.

Issued: July 16, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ See *R.M.*, Docket No. 16-0807 (issued August 26, 2016).